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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,194	12/16/2003	Anthony Kit Lun Leung	884.0213USU	5513
47545	7590	04/11/2006		
STEVEN A. GARNER, ESQ. CONAIR CORPORATION ONE CUMMINGS POINT ROAD STAMFORD, CT 06902			EXAMINER NGUYEN, TUAN N'	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/737,194

Applicant(s)

LEUNG, ANTHONY KIT LUN

Examiner

Tuan N. Nguyen

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The amended limitations "the liquid escaping through said first outlet and said second outlet simultaneously creates a first whirling flow pattern and a second whirling flow pattern" in lines 10-12 of claim 1 and "said water escapes through said plurality of outlets and simultaneously creates a plurality of whirling flow patterns" in lines 16-18 of claim 14, with emphasis added to the word "simultaneously," are not presented in the original specification. Therefore, they are considered as new matter.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection as indicated above.
3. Applicant's arguments filed 1/6/06 have been fully considered but they are not persuasive. With respect to the applicant's argument the grate of Kapnick is not convex, the examiner would like to direct to Fig. 1 where the grate (22) of Kapnick

Art Unit: 3751

protruded from the floor/bottom (13) and being considered as convex in shape by the examiner, such protruded grate are well know in the art to have convex shape to prevent things from sinking into the grate and clog it.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-9 and 13-21 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 3,034,139 (hereinafter Kapnick).

In regard to claim 1, Kapnick discloses a portable foot bath comprising a reservoir (11) for holding a volume of liquid having a floor (13); a jet (21) being disposed on the floor, the jet being connected to a pump (14); a first outlet (22) in a first location of the floor; and a second outlet (the other 22) in a second location of the floor being at a different location than the first location, wherein the jet circulates the liquid in the reservoir, the liquid escaping through the first outlet and the second outlet creates a first whirling flow pattern and a second whirling flow pattern, respectively, from the liquid in the reservoir. In regard to claim 2, the jet is adjustable to control a direction of the liquid. In regard to claim 3, the jet has a plurality of nozzles (see col. 3, lines 43-45). In regard to claim 4, the first outlet a first drain located in the floor, the first drain having a grate (see Figs. 1, 3, and 4). In regard to claim 5, the second outlet a second drain located on the floor, the second drain having a grate (see Figs. 1, 3, and 4). In regard to claim 6,

the jet (21) has a substantially "L" shape. In regard to claim 7, the first outlet, to the examiner's point of view, is adjacent to the second outlet. In regard to claim 8, the jet is a plurality of jets (21) disposed in a circular manner on the floor. In regard to claim 9, the jet sprays the liquid in a horizontal direction relative to the floor, the jet is inherently being adjustable to spray the liquid upward relative to the horizontal direction and adjustable spray the liquid downward relative to the horizontal direction by the "L" shape. In regard to claim 13, the jet is connected to the first outlet and the second outlet, the first outlet and the second outlet providing the liquid to the pump (14), the pump circulating the liquid to the jet, the jet spraying the liquid in the reservoir in the first whirling flow pattern and the second whirling flow pattern in a continuous manner.

In regard to claims 14-20, Kapnick discloses a portable foot bath comprising a housing (11) having a plurality of legs (12) and a substantially circular shaped reservoir formed therein, the substantially circular shaped reservoir holding a volume of water, the circular shaped reservoir having a floor (13); a plurality of capable of being adjustable jets (21) having a substantially "L" shape, the plurality of adjustable jets being in the housing in a substantially circular array, each of the plurality of jets having an inlet and an outlet, each inlet being connected to a pump (14), each outlet being a nozzle for releasing a pressurized flow of the water in the reservoir; and a plurality of outlets (22) being disposed through the floor connected to the pump, wherein the water escapes through the plurality of outlets and creates a plurality of whirling flow patterns in the substantially circular shaped reservoir when the plurality of adjustable jets circulate the water in the reservoir. The plurality of whirling flow patterns is each a pattern of a

Art Unit: 3751

swirl. The plurality of whirling flow patterns are each a whirling mass of water, the whirling mass is inherently being drawn to a centermost portion of each of the plurality of outlets. Each of the plurality of adjustable jets has a substantially "L" shape. The portable foot bath further comprises a first and a second foot rests (any first and second portion on the floor about 22), at least one of the plurality of outlets being disposed in each of the first and the second foot rests, at least one of the plurality of outlet having a grate being disposed thereon, the grate that is capable of having a slight convex shape. Each of the plurality of adjustable jets sprays the water in a horizontal direction and is adjustable to spray the water first direction being inclined from the horizontal direction and in a second direction being declined from the horizontal direction. Each of the plurality of whirling flow patterns in the substantially circular shaped reservoir has a direction, the direction being selected from the group consisting of a clockwise direction, a counterclockwise direction, and any combinations thereof.

In regard to claim 21, Kapnick discloses a portable foot bath comprising a reservoir (11) for holding a volume of liquid having a floor (13); a jet (21) being connected to a pump (14); a first outlet (22) in a first location of the floor; and a second outlet (the other 22) in a second location of the floor being at a different location than the first location, wherein the first outlet and the second outlet each has a grate connected thereto (see Figs. 1, 3 and 4), the grate is capable of having a convex shape (see Fig. 1) and capable of preventing any blockage of the first and second outlets by the foot.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kapnick in view of US Patent 6,309,366 (hereinafter Maxwell).

Although the portable bath device of the Kapnick reference does not include a heater, a vibratory device, and a tube having a plurality of apertures as claimed, attention is directed to the Maxwell reference which discloses an analogous portable bath device having a heater, a vibratory device, and a tube (95) having a plurality of apertures capable of performing the functions as claimed to improve the therapeutic effect. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ, on the Kapnick device, a heater, a vibratory device, and a tube having a plurality of apertures as, for example, taught by Maxwell in order to improve the therapeutic effect.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

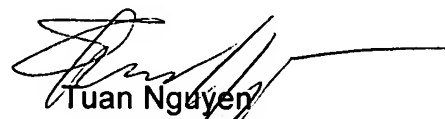
Art Unit: 3751

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Tuan Nguyen  
Primary Examiner  
Art Unit 3751  
4/3/08

TN